

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 643 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

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GUJRABEN LALLURAM

Versus

STATE OF GUJARAT

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Appearance:

MR SV PARMAR for Petitioner  
MR VB GHARAMNIYA AGP for Respondent No. 1  
MR SK JHAVERI for Respondent No. 2  
MR MC BAROT for Respondent No. 3

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CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 20/03/98

ORAL JUDGEMENT

In this application prayers are made for regularization of encroachment of land made by the petitioner for construction of house in terms of Government Resolutions and the District Panchayat

Appellate Committee statement, and to take suitable actions against the persons practising untouchability.

2. This matter was heard and picture had become somewhat clear on 18th March, 1989. Learned counsel for petitioner stated that petitioner who belongs to Scheduled Caste has been harassed by the Society at large and that the Gram Panchayat and the respondent-authorities have acted against the interest of petitioner, and therefore, this matter should be heard by one of the Judges who have been transferred from outside Gujarat. He was, therefore, directed to move the Hon'ble Chief Justice for obtaining appropriate orders for placing this matter before any other Bench. However, he has not moved the Hon'ble Chief Justice and had stated that he does not want the same. However, he prayed for two weeks' time saying that he will call for the information about the whereabouts of the petitioner from the petitioner's house and from the District Primary Education Officer and he had not received any information as yet, and therefore, he was not in a position to prosecute the matter. A copy of that letter addressed to the District Primary Education Officer, Banaskantha District, Palanpur, is placed on record by him. The request for time was not granted as it appeared that this was merely with a view to delay the hearing, which is virtually complete.

3. On the question of encroachment, Mr. Justice S.K Keshote by his Order dated 4th August, 1997 had noted that looking to the controversy raised in the present case, as well as the pleadings of the parties, it was considered appropriate to direct the Collector, Banaskantha at Palanpur, to make a Panchnama of the site and after giving the notice and opportunity of hearing to the petitioner and Dhanera Nagar Palika, to record findings on the grievance of the petitioner and send the same to this Court. The petitioner was also required to file a representation in respect thereof, on receipt of the notice from the Collector. The Dhanera Nagar Palika was also entitled to file defence on the representation made by the petitioner. The Collector was also directed to send his findings to this Court within a period of four months thereafter.

4. By his letter dated 16th March, 1998, Collector sent report on making Rojkam of the disputed site. It was found that it was an open land and there was no encroachment and that the suit land was being used as a road and the petitioner was not residing at that village.

He further submitted that for the purpose of completing the legal proceedings under Section 37-A of the Land Revenue Code, and other incidental procedures, hearing of the petitioner is likely to take sometime. But, a copy of the Panchnama has been sent for perusal.

5. The affidavit-in-Reply filed by the respondents also show that the husband of the Applicant - Ishwarbhai Muljibhai who was a Teacher in Primary School at Dhanera was transferred 10 years before from Dhanera to some other village, and the encroachment was removed by them 10 years before, and since 10 years, they have removed the encroachment and at present, there is no encroachment.

6. Because of such an affidavit, petitioner has made Civil Application No. 4487 of 1997 with a prayer that respondents be directed to erect the house at the disputed place and direct the District Superintendent of Police to make investigation into this case under the provisions of Civil Rights Act, 1955 and the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989. And to direct the then D.D.O at Palanpur to file affidavit in reply and to direct the Administrative Officer of the Banaskantha District Panchayat to file Affidavit as to under what circumstances the applicant's husband was transferred from Dhanera 10 years ago. This is obviously going to far. In fact, the position is that at present there is no encroachment and the encroachment has already been removed 10 years ago and the petitioner's house can not be re-erected by the respondents. Petitioner has kept silence for 10 years. If the petitioner had been evicted, petitioner would have complained to the Authorities concerned or atleast to us. However, nothing has been done so also nothing has been done for challenging the transfer of the petitioner's husband 10 years ago, therefore, this Civil Application with such prayers at belated stage and with stale issues cannot be granted, and therefore, Civil Application for joining the new respondents is dismissed.

On merits of the matter, petitioner has not made out any case, hence, this petition stands dismissed. Rule discharged. Interim relief stands vacated.

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Prakash\*